IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 313 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

ARVIND MILLS LTD. NARODA & OTHERS

Versus

REGISTRAR OF COMPANIES

Appearance:

MR AKSHAY H MEHTA for Petitioners

MS PJ DAVAWALA for Respondent No. 1

MR PB BHATT APP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/11/98

ORAL JUDGEMENT

Heard learned advocates Mr. Akshay Mehta for the applicants, Ms. P.J Davawala for the Respondent No. 1 and learned APP Mr. P.B Bhatt for the respondent No. 2 State.

2. This application under Section 397 read with

Section 401 CrPC has been filed by the accused in Criminal case No. 1 of 1993 pending before the learned Chief Metropolitan Magistrate, Ahmedabad. The complaint was lodged by the Registrar of Companies, the Respondent No.1 herein against the accused-applicants for commission of offence punishable under Section 113 (2) of the Companies Act, 1956 [hereinafter referred to as `the Act']. It is the allegation of the complainant that the accused had failed to comply with the provisions made in Section 113 (1) of the Companies Act thereby committing default for which they are liable to be punished under Section 113 (2) of the Act. Pending the case before the learned Magistrate, the accused preferred application Exh. 34 for dropping the proceedings initiated against them. The said application was rejected by the learned Magistrate under his judgment and order dated 22nd July, 1994. Feeling aggrieved, the accused have preferred the present application.

3. Accused No. 1 is a Public Limited Company. Accused Nos. 2 to 5 are the Managing Directors of the accused No. 1-Company and accused Nos. 6 to 10 are the Directors of the accused No. 1-Company. The alleged offence appears to have been committed in respect of the transfer of shares applied for by one Vinay J. Dixit of Varanasi who had made an application for transfer of shares in his favour on 1st February, 1991. The said application was accepted by the Board of Directors on 19th March, 1991 w.e.f 20th February, 1991 and the said certificates were received by said Vinay Dixit on 12th July, 1991. Section 113 (1) of the Act enjoins upon a Company, inter alia, to deliver the certificates of shares, debentures, certificate of debenture-stocks, transferred within two months after the application for the registration of the transfer of such shares, etc. Section 113 (2) of the Act provides that, `if the default is made in complying with sub-Section (1), the Company and every officer of the Company who is in default, shall be punishable with fine, which may extend to five hundred rupees for every day for during which the default continues'. In the present case, the facts undisputed are that the application for transfer was made on 1st February, 1991 and was accepted on 19th March, 1991 w.e.f 20th February, 1991 and the share certificate was delivered on 12th July, 1991. Obviously, the share certificates were not delivered within the statutory period of two months. The complaint therefor was lodged on 20th January, 1993.

4. Mr. Mehta has submitted that the complaint has been lodged long after the expiry of the period of

limitation and is not maintainable. The cognizance of the said offence taken by the learned Magistrate is, therefore, ex-facie bad and requires to be set-aside. He has further submitted that the learned Magistrate has erred in holding that the complaint was lodged within the period of limitation. The learned Magistrate while considering application Exh. 34 made by the accused has taken into consideration the explanation dated 30th October, 1991 [Exh. 34/1] sought by the complainant and the answer dated 12th November, 1991 [Exh. 34/2] given by the accused No. 1-Company. The learned Magistrate has also taken into consideration the fact that the complainant had sought advice of the Government and the complaint was lodged after such advice was received. Mr. Mehta has relied upon Section 113 (2) of the Act and has submitted that only punishment that can be imposed under Section 113 (2) is that of fine. He has submitted that in view of provisions contained in Section 468 (1) and Clause (a) of Section 468 (2) there is an express bar against the cognizance of an offence six months after the date of the offence, if the offence is punishable with fine only. In the present case, the share certificates were required to be delivered within two months which the Company did fail to do but the same were delivered on 12th July, 1991 and since 12th July, 1991, the Company cannot be said to be in default. Even if the Company can be said to be in default till 12th July, 1991, the complaint in respect of such default should have been lodged latest within six months from 12th July, 1991 that is by 12th January, 1992. However, in the present case, the complaint has been lodged on 20th January, 1993 i.e., more than a year after the expiry of the period of limitation. The learned Magistrate ought not to have taken cognizance of such an offence or atleast should have dropped the proceedings, by allowing the application Exh. 34 made by the accused. Mr. Mehta has further submitted that the learned Magistrate has wrongly relied upon the explanation sought on 13th October, 1991 and the advice received from the Government. He has submitted that there is no statutory requirement of giving notice of prosecution to the Company nor there is a statutory requirement of obtaining sanction from the Government and any communication or any unwarranted advice sought by the complainant cannot be treated as an application for sanction of the Government. The said period, therefore, could not have been availed of for exclusion while computing the period of limitation. The learned Magistrate has, therefore, wrongly held that the complaint was lodged within the period of limitation.

5. Ms. Davawala has contested this application and

has submitted that a complaint could not have been lodged without first gathering certain information which it did under letter dated 30th October, 1991. The complainant, therefore, took steps towards lodging the complaint on 30th October, 1991 ie. within the period of limitation, and therefore, the complaint cannot be said to have been preferred or lodged after the period of limitation. Besides, the complainant had sought advice of the Government and only after receiving the advice of the Government, the complaint could be lodged, and therefore also, the complaint cannot be said to be time-barred, as alleged. In the alternative, she has submitted that even if the complaint were lodged after the expiry of the period of limitation, Section 473 CrPC does empower the Magistrate to extend the period of limitation, if the delay has been properly explained or in the interest of justice. She has further submitted that no formal application for extension of period of limitation is required to be made by the complainant and upon perusal of the complaint, if the learned Magistrate finds that the delay has been properly explained or that it is in the interest of justice to do so, it may extend the period of limitation and take cognizance of the offence. In the present case, however, the learned Magistrate proceeded on the basis that there was no delay in lodging the complaint, and therefore, there was no occasion for the learned Magistrate to consider whether the delay was properly explained or not or whether it was in the interest of justice to extend the period of limitation. She has, therefore, submitted that the matter be remanded to the learned Magistrate for considering whether it would be in the interest of justice to extend the period of limitation and to take the cognizance of the offence complained of. In support of her arguments, she has relied upon the judgement of this Court in the matter of Sureshbhai K. Desai v. State of Gujarat {1983 Cr.L.J 1684} and also on the judgment of the Madhya Pradesh High Court in the matter of Madan Mohan Sharma & Anr. v. State of M.P & Anr., {1990 Cri. L.J. 1046}. She has also read over the communication Exh. 34/1 and has submitted that the said explanation was called for under Section 209A of the Act and the Company was also warned that in case of failure to comply with the said communication, the Company would be liable to be punished under sub-Section 8 of Section 209A. Sub-section 8 of Section 209A provides that, "if default is made in complying with the provisions of this section, every officer of the Company who is in default shall be punished with fine which shall not be less than five thousand rupees and also with imprisonment for a term not exceeding one year.

6. I am unable to accept that the communication dated 30th October, 1991 [Exh. 34/1] can be said to be a notice of prosecution as envisaged under Section 470 (3) CrPC. The said communication can at the most be said to be a notice of prosecution under Section 209A of the Act and the period spent in collecting such material cannot be excluded for computation of period of limitation for lodging complaint for commission of offence under Section 113 (2) of the Act. Even if the said period (13 days) is excluded for computation of the period of limitation, the complaint cannot be said to have been lodged within the statutory period of limitation. Besides, Ms. Davawala has not been able to point out any provision under which the complainant was required to obtain prior sanction of the Government to lodge prosecution. Merely because the complainant had thought it fit to seek some advice of the Government, period spent in seeking such advice cannot be availed of for the purpose of computation of period of limitation. In my view, therefore, the complaint lodged against the accused is ex facie time-barred and no cognizance could have been taken by the learned Magistrate. Further, the learned Magistrate has erred in rejecting Application Exh. 34 made by the accused. I cannot agree to the contention of Ms. Davawala that since there has been no active application of mind by the learned Magistrate, whether the period of limitation is required to be extended in the interest of justice or not, the matter should be remanded to the learned Magistrate. The complaint has been lodged nearly six years before. Besides, the offence alleged to have been committed by the accused is not such which would require extension of period of limitation in the interest of justice as provided under Section 473 CrPC.

7. For the reasons recorded hereinabove, the impugned order dated 22nd July, 1994 made by the learned Chief Metropolitan Magistrate, Ahmedabad below Application Exh. 34 is set-aside. Application Exh. 34 stands allowed. Prosecution lodged against the accused applicants is required to be quashed and set-aside. Criminal case No. 1 of 1993 pending before the learned Chief Metropolitan Magistrate, Ahmedabad is hereby quashed.

8. The application is allowed accordingly. Rule is made absolute. There shall be no order as to costs.

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Prakash*